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SENATE BILL 855 By  
Jackson

HOUSE BILL 1116  
By Shepard

AN ACT to amend Tennessee Code Annotated, Title 63, Chapter 8,  
relative to the practice of optometry.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 8, is amended by adding  
the following language as a new section thereto:

Section 63-8-124. It is the public policy of the state that optometrists rendering  
visual care to its citizens shall practice in an ethical, professional manner; that their  
practices shall be free from any influences that would interfere with their exercise of  
professional judgment; that the visual welfare of the patient shall be the prime  
consideration at all times; and that optometrists shall not be associated with any person  
or persons in any manner which might degrade or reduce the quality of visual care  
received by the citizens of this state.

SECTION 2. Tennessee Code Annotated, Title 63, Chapter 8, is amended by adding  
the following language as a new section thereto:

Section 63-8-125.

(a) A manufacturer, wholesaler, or retailer of ophthalmic materials shall not, directly or indirectly, control or attempt to control the professional judgment, manner of practice, or practice of an optometrist.

(b) As used in this section, "control or attempt to control the professional judgment, manner of practice, or practice of an optometrist" includes, but is not limited to:

(1) Setting or attempting to set the professional fees or office hours of an optometrist or the number of patients to be seen by an optometrist;

(2) Restricting or attempting to restrict an optometrist's discretion to schedule appointments at times convenient to the optometrist's patients;

(3) Terminating or threatening to terminate an agreement, such as a lease, with an optometrist as a means of controlling or attempting to control the professional judgment, manner of practice, or practice of the optometrist;

(4) Providing to or sharing with an optometrist, employees, communication services or equipment, or other business services, unless the optometrist directly employs or contracts with the employees shared;

(5) Employing or contracting for the services of an optometrist if part of the optometrist's duties involve the practice of optometry (except that an optometrist may legally contract to provide optometric services to the employees of the manufacturer, wholesaler, or retailer);

(6) Paying an optometrist for a service not provided;

(7) Restricting an optometrist's access to leased office space when the optometrist needs such access to provide emergency care to a patient;

(8) Restricting or attempting to restrict the scope of practice of the optometrist in a way that prevents the optometrist from engaging in the full scope of practice authorized by Tennessee law;

(9) Limiting or attempting to limit the optometric services and ophthalmic materials that the optometrist may provide to his or her patients or the information which may be disseminated to the public by the optometrist; and

(10) Limiting or attempting to limit the optometrist's exercise of independent professional judgment or responsibility in any way.

(c) Nothing in this section shall prevent an optometrist from entering into a lease or other agreement with a manufacturer, wholesaler, or retailer of ophthalmic materials for the leasing of building space for use in the optometrist's practice, provided the leased space is physically separate from the place of business of the manufacturer, wholesaler, or retailer, the lease or other agreement does not contain any provision through which the manufacturer, wholesaler, or retailer of ophthalmic materials controls or attempts to control the professional judgment, manner of practice, or practice of the optometrist, and the leased space provides privacy for the patients and confidentiality of their protected health information as addressed in the federal Health Insurance Portability and Accountability Act (HIPAA). Representatives of the lessor are only permitted on the lessee's premises when the lessee is present and when no patients are present. The lessor shall have no access to protected health information of patients.

(d) The board may promulgate rules and regulations pursuant to title 4, chapter 5, to implement the provisions of this section.

(e) The board may file an action in an appropriate court to enjoin any violation of this section by any manufacturer, wholesaler, or retailer of ophthalmic materials. If successful in establishing a violation or violations of this section, the board may recover court costs and reasonable attorney's fees.

(f) An optometrist may file an action in an appropriate court to enjoin a manufacturer, wholesaler, or retailer of ophthalmic materials from controlling or attempting to control the professional judgment, manner of practice, or practice of that

optometrist. If successful in establishing a violation or violations of this section, the optometrist may also recover any actual damages sustained by the optometrist, as well as court costs and reasonable attorney's fees.

(g) The attorney general may file suit in an appropriate court to enjoin any violation of this section by a manufacturer, wholesaler, or retailer of ophthalmic materials. If successful in establishing a violation or violations of this section, the attorney general may also recover a civil penalty not to exceed ten thousand dollars (\$10,000) for each violation of this section, plus court costs and reasonable attorney's fees.

(h) This section does not apply to a manufacturer, wholesaler, or retailer of ophthalmic materials who is a licensed optometrist or physician or a legal entity wholly owned by one (1) or more licensed optometrists or physicians, unless the optometrist or physician or legal entity wholly owned by one (1) or more optometrists or physicians has offices at more than three (3) locations.

SECTION 3. This act shall take effect on July 1, 2003, the public welfare requiring it.